

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-573V
(not to be published)

* * * * *

ROGER GREEN, *Executor*, ESTATE *
OF LINDA MAE GREEN, *

* Special Master Corcoran

*

Petitioner, * Filed: April 23, 2018

*

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Decision by Stipulation; Damages;
Influenza (“flu”) Vaccine;
Transverse Myelitis (“TM”).

*

Respondent. *

*

* * * * *

Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL for Petitioner.

Daniel Principato, U.S. Dep’t of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On April 27, 2017, Roger Green filed a petition on behalf of Linda Mae Green seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).² Petitioner alleges that Ms. Green suffered from transverse myelitis (“TM”), ultimately leading to quadriplegia, respiratory failure, stroke, and death, as a result of her September 3, 2015 influenza

¹ Although this Decision has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’s website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision in its present form will be available. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”).

(“flu”) vaccine. Petitioner further alleges that Ms. Green has experienced the residual effects of this condition for more than six months.

Respondent denies that the flu vaccine caused Ms. Green’s TM or any other injury. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation (filed on April 20, 2018)³ that the issues before them could be settled, and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties’ stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum of \$410,000.00, in the form of a check payable to Petitioner.

Stipulation ¶ 8. This amount represents compensation for all damages that would be available under Section 15(a) of the Act.

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the Court is directed to enter judgment herewith.⁴

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ The Stipulation was initially misfiled as a Proffer. *See* ECF No. 21.

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

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|----------------------------|---|-------------------------|
| ROGER GREEN, EXECUTOR, |) | |
| ESTATE OF LINDA MAE GREEN, |) | No. 17-573V |
| |) | Special Master Corcoran |
| Petitioner, |) | ECF |
| |) | |
| v. |) | |
| |) | |
| SECRETARY OF HEALTH AND |) | |
| HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of Linda Mae Green, petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Linda Mae Green’s receipt of the influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Linda Mae Green received the flu vaccination on or about September 3, 2015.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the vaccine caused Linda Mae Green to develop transverse myelitis (“TM”). Linda Mae Green passed away on November 18, 2015. Petitioner further alleges that Linda Mae Green’s death was the sequela of her alleged vaccine-related injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Linda Mae Green’s condition or her death.

6. Respondent denies that the flu immunization is the cause of Linda Mae Green's alleged TM, and/or any other injuries or her death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum payment of \$410,000.00 in the form of a check payable to petitioner as legal representative of the Estate of Linda Mae Green. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as executor of the Estate of Linda Mae Green estate under the laws of the State of California. No payment pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as executor of the Estate of Linda Mae Green. If petitioner is not authorized by a court of competent jurisdiction to serve as executor of the Estate of Linda Mae Green at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as executor of the Estate of Linda Mae Green upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and a legal representatives of Estate of Linda Mae Green, and on behalf of himself, Linda Mae Green, and her heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Linda Mae Green resulting from, or alleged to have resulted from, the flu vaccine administered on or about

September 3, 2015 as alleged by petitioners in a petition for vaccine compensation filed on or about April 27, 2017, in the United States Court of Federal Claims as petition No. 17-573V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Linda Mae Green's alleged TM, and/or any other injury or her death.

19. All rights and obligations of petitioner in his capacity as legal representative of the Estate of Linda Mae Green shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

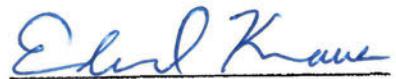
END OF STIPULATION

Respectfully submitted,

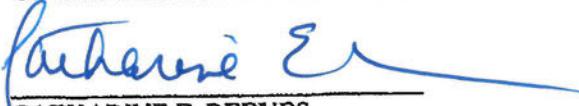
PETITIONER:


ROGER GREEN

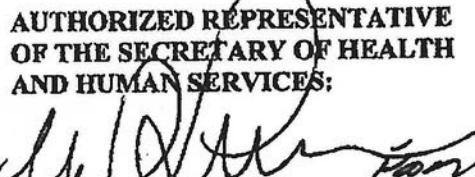
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Dated: 7/20/2018